

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

**AMERICAN COLLEGE OF
PEDIATRICIANS**, on behalf of itself and its
members;
CATHOLIC MEDICAL ASSOCIATION, on
behalf of itself and its members; and
JEANIE DASSOW, M.D.,

No. 1:21-cv-00195-TRM-SKL

Plaintiffs,

v.

XAVIER BECERRA, in his official capacity as
Secretary of the United States Department of Health
and Human Services; **UNITED STATES
DEPARTMENT OF HEALTH AND HUMAN
SERVICES**; **LISA J. PINO**, in her official capacity
as Director of the Office for Civil Rights of the U.S.
Department of Health and Human Services; and
**OFFICE FOR CIVIL RIGHTS OF THE U.S.
DEPARTMENT OF HEALTH AND HUMAN
SERVICES**,

Defendants.

UNOPPOSED MOTION TO AMEND SCHEDULING ORDER

Defendants hereby submit this Unopposed Motion to Amend the Scheduling Order entered by the Court on July 19, 2022, ECF No. 55. Defendants request that the Court amend the deadline for Defendants to file an index of the administrative record and serve the administrative record on Plaintiffs, currently set for November 15, 2022. Defendants request that the Court set this deadline at seven days after the Court rules on Defendants' pending Motion to Dismiss First Amended Complaint, ECF No. 51. Counsel for Plaintiffs have informed counsel for Defendants that Plaintiffs do not oppose the relief sought in this Motion.

In a discovery plan filed under Rule 26(f), Defendants explained their position that the Court should defer production of the administrative record until after the Court rules on

Defendants' Motion to Dismiss. *See* ECF No. 42, at 2-3. Defendants have filed a motion to dismiss Plaintiffs' First Amended Complaint for lack of subject-matter jurisdiction. ECF No. 51 (motion); ECF No. 52 (supporting memorandum). It is very likely that the Court will grant the Motion to Dismiss, at least in part, as Plaintiffs indicated that they do not oppose dismissal of one of their claims. *See* ECF No. 55, at 6 ("Plaintiffs do not oppose dismissal of Claim Seven of their Amended Complaint."). Deferring service of the administrative record until after the Court rules on Defendants' Motion to Dismiss is appropriate because the Court's ruling will determine what claims and what administrative actions, if any, remain as part of the case. *See In re United States*, 138 S. Ct. 443, 445 (2017) (per curiam) ("the District Court should have . . . stay[ed] implementation" of order for government to produce administrative record and "first resolved the Government's threshold arguments" concerning subject-matter jurisdiction because "those arguments, if accepted, likely would eliminate the need for the District Court to examine a complete administrative record").

Following a status teleconference held on July 12, 2022, the Court entered a Scheduling Order setting Defendants' deadline for production of the administrative record at November 15, 2022. During the status teleconference, the Court indicated that it anticipated that it would issue a ruling on Defendants' Motion to Dismiss before November 15. Amending the deadline to seven days after the Court's ruling on Defendants' Motion to Dismiss would therefore be consistent with the Court's intent to schedule service of the administrative record for shortly after the Court rules on Defendants' Motion to Dismiss. Granting the relief requested herein would not unduly delay proceedings and would not prejudice any party, as shown by the fact that Plaintiffs do not oppose this Motion.

For the foregoing reasons, Defendants request that the Court amend the Scheduling Order to set the deadline for service of the administrative record and filing of an index of the administrative record to seven days after the Court rules on Defendants' Motion to Dismiss.

Dated: November 14, 2022

Respectfully submitted,

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Principal Deputy Assistant Attorney General

MICHELLE R. BENNETT
Assistant Branch Director

/s/ Jeremy S.B. Newman

Jeremy S.B. Newman

Trial Attorney

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